

RECEIVED

May 08 2026

S.C. SUPREME COURT

May 8, 2026

Via Electronic Filing

The Honorable Patricia A. Howard
Clerk of the South Carolina Supreme Court
supctfilings@sccourts.org

Re: *Tibbs v. Asbestos Corporation Ltd.*
Appellate Case No. 2025-002104
Second Notice of Supplemental Authority

Dear Ms. Howard:

Pursuant to Rule 208(b)(7), SCACR, the Charter Appellants join in the submission of the Altrad Appellants on April 30, 2026. Further, Charter Appellants respectfully provide the Court 1) notice of supplemental authority relevant to issues presented throughout the briefing, and 2) an update on Plaintiff Counsels' pursuit of a default judgment against Cape Intermediate Holdings Limited ("CIHL") in *Ross v. Ascend Performance Materials*, Case No. 2024-CP-40-03710 ("*Ross*").

1. Third Circuit Opinion Regarding Constitutional Limits of Authority of South Carolina Receiver Appointed Over Foreign Corporation.

As this Court is aware from the Altrad Appellants' submission, the Third Circuit's prior opinion in *Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)* has been superseded by a new precedential opinion issued on April 27, 2026. See *Protopapas v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, Op. No. 25-1044 (3d Cir. Apr. 27, 2026). The Charter Appellants cited the prior opinion from the Third Circuit on Pages 39 – 40 of their initial brief (filed Dec. 10, 2025); Page 5 of their response to the so-called "Downstream Defendants" amicus brief (filed Feb. 19, 2026); and Page 2 of their response to Mr. Ashmore's amicus brief as a federal receiver (filed Feb. 23, 2026). Although the verbiage in the opinion that was quoted in the Charter Appellants' brief has changed, the new opinion continued to stress and reiterate the same points the Charter Appellants previously relied upon, including:

- "[T]he Constitution places limits on the authority a state court can exercise over companies that are incorporated in a sister state." Slip Op. at 28.

- [W]hen it comes to control over corporate decision-making, a state ‘has no interest in regulating the internal affairs of foreign corporations.’ Slip Op. at 29 (internal citations omitted).
- “The South Carolina Court could not unilaterally divest Whittaker’s board of that authority [to make litigation decisions, including to commence bankruptcy proceedings], and, once appointed, the South Carolina Receiver had to convince a New Jersey [where Whittaker was incorporated] court to displace the board.” Slip Op. at 53.

In lieu of enclosing an additional copy of the new opinion, the Charter Appellants respectfully refer the Court to Attachment No. 1 to the Altrad Appellants’ April 30 submission.

2. Plaintiffs’ Counsel’s¹ Decision to Seek Default Judgment Against CIHL in *Ross*.

Approximately 63 minutes into the oral argument, Justice Few inquired about why Plaintiffs’ Counsel did not seek a default judgment in *Park* against Cape and then about why Plaintiffs’ Counsel sought the appointment of a prejudgment receiver in *Park* instead.

Plaintiffs’ Counsel explained the reasons why a prejudgment receiver was sought - as opposed to obtaining a default judgment against CIHL (in cases other than *Tibbs* - as CIHL is not a party in *Tibbs*): 1) a default judgment would not be collectible against CIHL in the UK (because UK Courts have already determined that US Courts do not have jurisdiction over CIHL), 2) there are no known assets of CIHL in South Carolina, 3) to avoid impairing plaintiffs’ ability to recover insurance assets, and 4) the desire to have a receiver “marshal” all assets of CIHL before seeking judgment in cases against CIHL, asserting the belief that a prejudgment receiver appointed in *Park* should “marshal” all worldwide assets of CIHL in order to satisfy thousands of future claimants (and Plaintiffs’ Counsels’ future clients).

As pointed out in Charter Appellants’ update to the Court on March 26, 2026, the week following oral argument Plaintiffs’ Counsel requested a damages hearing against CIHL in *Ross*.²

¹ “Plaintiffs’ Counsel” refers to the lawyers that represent the *Tibbs*’ Plaintiffs, who are the same lawyers that represent(ed) plaintiffs in *Park* and many other asbestos cases – including in *Ross*. See *Tibbs* Final Response Brief, at p. 19 and p. 26, fn 27.

² Plaintiffs’ Counsel referenced *Ross* in its briefing to this Court: “Aside from the immediate *Tibbs* matter, in which the Receiver appeared to defend Cape, Cape has continued its policy of refusing to participate in U.S. litigation. Most recently, Cape was defaulted via a December 10, 2025 Order of Default for failing to appear in the matter of *Ross*....” *Tibbs* Final Response Brief, at p. 26, fn 27.

The Charter Appellants write to further update the Court regarding the status of the proceedings in *Ross*:

- Plaintiffs’ Counsel filed in *Ross* on April 2, 2026, “Plaintiffs’ Motion for Damages Against Cape Intermediate Holdings Limited” in advance of the damages hearing and requested that the Court “presume that Cape’s net worth is in excess of \$1 billion to determine punitive damages.” *See* Attachment 1, p. 15. This request was made even though a purported basis for both the October 13 (2025) Order in *Tibbs* (purported order appointing/confirming prejudgment receiver over non-party CIHL) and the Appointment Order in *Park* (requested by Plaintiffs’ Counsel after Park Estate was closed for prejudgment receiver over Cape PLC) was that the respective Cape entity was either insolvent or in danger of insolvency. *See* (R. pp. 038 – 042, R. p. 047, R. p. 780).
- On April 28, 2026, the *Ross* court entered an order granting default judgment against CIHL for approximately \$38 million after set offs, including \$20 million in punitive damages. *See* Attachment 2.

3. Cape Receivership Does Not Involve Insurance.

Justice Toal’s Amended Tenth Report to this Court referenced two ACL cases and issues related to funding settlements by insurers. However, the report conflated ACL and Cape where it stated: “These are the kinds of troubling matters that have surrounded settlement issues regarding the Cape/ACL entities and their insurers.”

Mr. Protopapas explained to the Supreme Court of the United States in December of 2025 that Cape is different from ACL (and Atlas Turner) because Cape has nothing to do with insurance. Mr. Protopapas’ brief in opposition to Atlas Turner’s petition for a writ of certiorari stated:

Atlas Turner and amici complain about two other receiverships that are not at issue in this appeal—involving Canadian company Asbestos Corporation Limited (ACL) and English company Cape Intermediate Holdings Limited (Cape).

As they note, ACL has filed for bankruptcy in Canada. Since that voluntary bankruptcy petition, neither the South Carolina Courts nor the receiver for ACL have taken any action—“extraterritorial” or otherwise—regarding ACL’s assets. And before the bankruptcy, ACL’s receiver simply investigated the existence of ACL’s insurance assets, taking no control over any. ...

May 7, 2026

Page 4

And the Cape receivership is nothing like this case, since it does not involve insurance assets; it involves direct, corporate veil-piercing liability for flooding South Carolina with asbestos for decades and then fraudulently winding up an American subsidiary in a blatant attempt to avoid liability.

See Attachment 3, Brief of respondent Peter D. Protopapas, in his capacity as Receiver for Atlas Turner, Inc., in opposition to Atlas Turner 's Petition, p. 34 (emphasis added).

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI

/s/ A. Victor Rawl, Jr.

Counsel for the Charter Appellants

Enclosures—Copies of Ross Motion and Order

cc: All Counsel of Record
Filed in Circuit Court